



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 25, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0357

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	15.410 Domestic Violence Investigation 5 Besides following 15.180-Primary Investigations officer will: Complete the Domestic Violence Supplement	Not Sustained (Training Referral)
# 2	15.410 Domestic Violence Investigation 2. Discretionary Arrests	Not Sustained (Lawful and Proper)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that Named Employee #1 (NE#1) violated policy by completing neither the required Domestic Violence Supplement (DV Supplement) nor taking the statement of a victim. The Complainant also alleged that NE#1 used improper discretion during a domestic violence (DV) investigation.

ADMINISTRATIVE NOTE:

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General's review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the involved employees. As such, OPA did not interview the involved employees in this case.

SUMMARY OF INVESTIGATION:

The Complainant is a therapist for a 16-year-old client (the Subject). The Complainant filed a complaint with OPA on behalf of the Subject. The Complainant alleged that NE#1 refused to listen to the Subject's perspective and labelled the Subject as the primary aggressor when responding to multiple DV incidents involving the Subject and the Subject's mother over a period of months. The Complainant also alleged that NE#1 did not include the Subject's narrative in the police reports, which could impact the Subject negatively in future incidents. OPA opened this investigation.

As part of its investigation, OPA reviewed the OPA Complaint, CAD Call Reports, Incident Reports, 911 Call Audio Recordings, and Body Worn Videos. OPA also interviewed the Complainant. Following OPA's intake investigation, the Office of the Inspector General approved this case for expedited investigation. (See Administrative Note above). The relevant facts are not in credible dispute because the interactions between the Subject and NE#1 were captured on



BWV and other relevant facts—such as those concerning the existence of a specific report or information thereon—are conclusively known.

NE#1 responded to two DV incidents involving the Subject and the Subject's mother during the relevant timeframe: one on July 18 (July 18 Incident), the other on March 11 (March 11 Incident).

The only information the Complainant provided about the March 11 Incident is that NE#1 provided DV resources to the Subject in order to give those resources to the Subject's mother. The Complainant reported that the Subject gave these resources to the Subject's mother, but that the Subject did not believe her mother pursued these resources. BWV established that NE#1 did give the Subject DV resources and asked her to give and interpret the DV resources to the Subject's mother. However, based on the report for this incident, the Subject's mother was the 911 caller for the March 11 Incident for an incident in which the Subject was not involved and that was not a mandatory arrest.

NE#1 completed an Incident Report for the July 18 Incident. This report was consistent with the information NE#1 received from the Subject and the Subject's mother, all of which was recorded on BWV. Although the report included neither a DV Supplement nor sworn statements from all witnesses and victims, the Incident Report did document a summary of the perspective of both the Subject and the Subject's mother. Specifically, the Subject's mother reported that she came home to a messy house and she asked the Subject to clean it. The Subject refused. The Subject's mother reported that she reached under the Subject's bed to throw away some items when the subject kicked, punched, and bit her. The Subject's mother had a visible bite mark on her left arm. The Subject stated that she kept snacks and food under her bed, so when her mother went to throw them away, the Subject "tapped" her mother in the back with her foot. The Subject stated that she tried to leave, but her mother blocked her path, so the Subject "shoved" her mother to the side of the room. The Subject said her mother charged her in a "tackling" manner, so the Subject admitted punching her mother in the face and biting her mother to get away. The Subject did not report any injuries. NE#1 listed the Subject as the suspect in the report and the Subject's mother as the victim. Because of the Subject's age (16 years old), NE#1 asked the Subject's mother what she wanted from the police. The Subject's mother stated that she did not want the Subject arrested but wanted the police to talk to the Subject. NE#1's supervisor arrived and spoke with the Subject. The Subject was not arrested.

The Complainant also alleged that, according to the Subject, NE#1 told the Subject that CPS would not be called because the Subject was at fault and "should know better." This was incorrect. NE#1's Incident Report stated that CPS was notified. A review of CPS referrals confirmed that CPS was notified on July 18 and a social worker was assigned. Moreover, BWV confirmed that no officer told the Subject she should "know better."

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

15.410 Domestic Violence Investigation 5 Besides following 15.180-Primary Investigations officer will: Complete the Domestic Violence Supplement

The Complainant alleged that NE#1 failed to abide by the documentation requirements of SPD Policy 15.410-POL-5.

In addition to an officer's obligation to comply with SPD Policy 15.180-Primary Investigations), SPD officers investigating a domestic violence incident are required to (1) attempt to obtain the domestic violence history of the



suspect, (2) complete a domestic violence supplement, and (3) use a sworn affirmation when taking a statement of a victim or witness. (SPD Policy 15.410-POL-5).

It does not appear that NE#1 met any of the technical requirements of SPD Policy 15.410-POL-5 for this incident in that NE#1 did not obtain the Subject's DV history, complete a DV Supplement, or use a sworn affirmation for the statements of the Subject or her mother. However, OPA notes that NE#1 completed an extremely thorough and accurate Incident Report. Moreover, NE#1 was a probationary officer at the time of this incident and his paperwork was screened and approved by his supervisor. Based on these facts, this omission appears to be a good faith mistake, not a willful omission amounting to misconduct.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review the documentation requirements of SPD Policy 15.410-POL-5 with NE#1, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral (Expedited)**

Named Employee #1 - Allegation #2

15.410 Domestic Violence Investigation 2. Discretionary Arrests

The Complainant alleged that NE#1 used improper discretion during this investigation.

SPD Policy 15.410-POL-2 mandates that officers make an arrest in a domestic violence incident where there is probable cause that the subject committed an assault or violated a court order within the past four hours. The policy further provides that arrests are otherwise discretionary. (SPD Policy 15.410-POL-2.). The policy further specifies that an officer may, in their discretion "arrest a sixteen or seventeen-year-old child if the officer has probable cause to believe that the child has assaulted a family or household member . . . in the preceding four hours."

The Complainant alleged that NE#1 refused to listen to the Subject's perspective and improperly labelled her as the aggressor. This was not accurate. As an initial matter, the Complainant was not present during the incident and admitted that he received all of the information in the Complaint from the Subject. A review of the BWV and Incident Report shows that NE#1 gave both the Subject and her mother an opportunity to give their sides of the story, which were documented faithfully in the Incident Report. However, even had NE#1 only listened to the Subject's story, NE#1 still would have been justified in determining that the Subject was a primary aggressor based on her admission that she struck first (by "tapping" her mother in the back with her foot), then "shoved" her mother aside, and because the Subject's mother was the only one with visible injuries.

NE#1 did exercise discretion in this DV investigation by determining the primary aggressor, then not arresting the Subject (who was under the age of 18). However, NE#1's use of discretion in this instance was reasonable and within policy.



Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**